

**STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION**

COMPLAINT AGAINST:

HON. BEVERLEY NETTLES-NICKERSON

Docket No.

30th Circuit Court
Veterans Memorial Courthouse
313 W. Kalamazoo St.
P.O. Box 40771
Lansing, Michigan 48901

Formal Complaint No. 81

COMPLAINT

The Michigan Judicial Tenure Commission (“JTC”) files this complaint against Honorable Beverley Nettles-Nickerson (“Respondent”), 30th Circuit Court Judge, Lansing, Michigan. This action is taken pursuant to the authority of the Commission under Article 6, Section 30 of the Michigan Constitution of 1963, as amended and MCR 9.200 *et seq.* The filing of this Complaint has been authorized and directed by resolution of the Commission.

1. Respondent is, and at all material times was, a judge of the 30th Circuit Court or the 54A District Court in Lansing, Michigan. Respondent served on the 54A District Court between 1990 and 2002. Respondent has served on the 30th Circuit Court from 2003 to the present.

2. As a judge, Respondent is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.

COUNT I: Fraudulent claim of residency to obtain a divorce.

3. Respondent became estranged from her husband and took a separate residence in Shiawassee County.

4. On or about July, 2005, Respondent made inquiries at Region II of the State Court Administrative Office concerning whether her anticipated divorce action could be assigned to a county other than Ingham. Respondent was advised of the following by the State Court Administrative Office:

- (a) Residency requirements in divorce proceedings were governed by MCL 552.9, which requires that one of the parties to a divorce action must have resided in the county in which the complaint is filed for 10 days immediately preceding filing of the divorce complaint;
- (b) The Respondent's colleagues on the Ingham County Circuit Court would have grounds to recuse themselves and a visiting judge would then be brought in;
- (c) Judges are required to reside in the county in which they serve; and
- (d) If a judge established residency in another county to satisfy the residency requirement for filing of a divorce action, their judicial office would be vacated, pursuant to Article VI, Section 20 of the 1963 Michigan Constitution. See also MCL 168.422.

5. On August 12, 2005, Respondent went to her attorney's office to sign the complaint for divorce.

6. At that time, she swore under oath that she and her then-husband, Daniel Nickerson, Jr., had resided within the State of Michigan for more than 180 days and that Mr. Nickerson had resided in Kent County for at least 10 days immediately prior to filing of the divorce complaint.

7. Respondent listed Mr. Nickerson's address in the divorce complaint as 4320 Kalamazoo Avenue SE in Grand Rapids, which is a federally subsidized building for senior citizens on limited income, where Mr. Nickerson's mother lived.

8. On June 16, 2006, Respondent testified under oath at her divorce hearing that "all of the allegations contained [in the divorce complaint] were true at th[e] time [they were made]."

9. Respondent filed her complaint for divorce on August 15, 2005.

10. Mr. Nickerson was *not* a resident of Kent County for the ten (10) days preceding the filing of the divorce (i.e., August 6, 2005 – August 15, 2005), as he was and had been residing in the marital home on Beech Tree Lane in Okemos, Ingham County, the fact of which Respondent was well aware.

11. She further testified under oath that day that all of the allegations in the divorce complaint "remain true today."

12. In fact, however, Respondent's complaint for divorce, executed under oath, was false and fraudulent.

13. Further, Respondent committed perjury at the divorce hearing by saying that all of the allegations in the complaint (including the jurisdictional allegations regarding where Mr. Nickerson was living) were true when made and were still true at that time.

14. The conduct described in paragraphs 3 through 13 constitutes:

- (a) Perjury, contrary to MCL 750.422;
- (b) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (c) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
- (d) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct ("MCJC"), Canon 1;
- (e) Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
- (f) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;

- (g) Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;
- (h) Allowing family, social, or other relationships to influence judicial conduct or judgment, in violation of MCJC, Canon 2C;
- (i) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (j) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (k) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (l) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

COUNT II: Making false statements, soliciting false statements by others, and/or fabricating evidence.

A. Fabricating evidence.

15. On October 28, 2005, Respondent received the case of *Accu-Bite v Schein*, Case No. 05-1271-CB. Respondent was on vacation at the time and another judge heard portions of the case in Respondent's absence. A member of Respondent's staff sent her a memo indicating the attorneys were likely to appear on Monday, October 31, 2005, when Respondent was due back from vacation, to

request an extension of time to comply with the order of the other judge requiring production of various items. Scheduling conferences were also set in a number of cases for that same Monday.

16. On October 31, 2005, the attorneys appeared at court and Respondent was so advised. In a phone conversation prior to coming to court, Respondent berated her judicial assistant, Angela Morgan, with repeated use of the “f-word” because Respondent had to come to court that day.

17. On November 8, 2006, the Judicial Tenure Commission invited Respondent’s comment with respect to a number of matters, including the incident on October 31, 2005 involving *Accu-Bite v Schein*. Respondent’s answer, dated January 4, 2007, claimed Respondent had been on vacation on October 31, 2005 (continuing her vacation from the prior week).

18. As “evidence” of being on vacation, Respondent provided the Commission with a purported e-mail sent to court personnel, listing October 31, 2005 as a vacation day.

19. Respondent was not, in fact, scheduled to be on vacation on October 31, 2005. The e-mail purporting to show Respondent as being on vacation was fabricated, false and calculated to mislead the Commission.

B. Falsehoods to justify her improper behavior.

20. On September 8, 2005, Respondent dismissed *Jones v City of Lansing*, Case No. 04-1322-CZ, purportedly for “lack of progress”. The plaintiff refiled the case (No. 05-1090-CZ).

21. On February 6, 2007, Respondent sent Greg Liepshutz, counsel for the plaintiff, an alleged summary of a conference call held on February 5, 2007.

22. Respondent’s communication falsely claimed that counsel for neither party had appeared on September 8, 2005, when the earlier case had been dismissed for lack of progress.

23. In fact, Donald Busta, an associate of Mr. Liepshutz, had appeared and argued against dismissal of the case.

C. Court reporter and required breaks.

24. In December, 2005, Respondent became involved in a dispute with Chief Judge William Collette over Respondent’s failure to allow timely lunch hours for her court reporter, Jean Ann Hamlin, as required by union contract.

25. Chief Judge Collette advised Respondent she had to follow the terms of the union contract, regarding breaks.

26. Respondent then directed Ms. Hamlin to inform Judge Collette that she was getting her required breaks, including the lunch hour break, and that Ms.

Hamlin was in agreement with the present trial schedule and that there were no problems in the office.

27. Ms. Hamlin sent a letter to Judge Collette, but it did not contain the falsehoods that Respondent had tried to get her to say.

28. The Respondent then directed Ms. Hamlin to send Judge Collette a second letter on the subject.

29. Respondent expressed her dissatisfaction with Ms. Hamlin's responses to Judge Collette, and told Ms. Hamlin that she believed it would be better if she worked for another judge.

30. Ms. Hamlin is a long-time court reporter with an exemplary work record who transferred to another judge at the 30th Circuit Court where she continues to be employed.

31. Respondent had no issues with Ms. Hamlin until Ms. Hamlin refused to lie for her.

D. False accusations that Judge William Collette had tried to develop an improper social relationship.

32. Respondent told her then-husband, Daniel P. Nickerson, Jr., and another member of the 30th Circuit Court, that Chief Judge William Collette was inviting Respondent out for drinks or "coming on to" her and that she had to tell Judge Collette that she and he were going to have a professional relationship, only.

33. As a result of these allegations, Mr. Nickerson went to Judge Collette's office, in January or February, 2006, and accused Judge Collette of attempting to cultivate an improper relationship with Respondent. Judge Collette denied the allegations and reminded Mr. Nickerson that Respondent had recently made public allegations of racism against him.

34. The conduct described in paragraphs 15 through 33 constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
- (c) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- (d) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (e) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (f) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3);
- (g) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4); and

- (h) Failure to cooperate with a reasonable request for assistance by the Commission, contrary to MCR 9.208(B), as to paragraphs 15-19.

E. Transfer of court reporter.

35. On January 26, 2007, Respondent called a press conference in her courtroom to which members of the news media had been invited and were in attendance.

36. During the press conference, Respondent falsely accused the Hon. William Collette, 30th Circuit Court Administrator David Easterday and James Hughes, Region II Administrator for SCAO, among others, of advocating the termination or transfer of her court reporter, Dorothy Dungy.

37. Respondent also falsely accused Judge Collette and Mr. Hughes of filing grievances against Respondent with the Judicial Tenure Commission.

38. The conduct described in paragraphs 35 through 37 constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963; as amended, Article VI, §30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the MCJC, Canon 1;

- (d) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- (e) Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;
- (f) Lack of personal responsibility for Respondent's own behavior and for the proper conduct and administration of the court in which you presides, contrary to MCR 9.205(A);
- (g) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (h) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (i) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (j) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

COUNT III: Coercing or pressuring court employees into listing cases on the No Progress Docket.

39. The 30th Circuit Court runs two programs to monitor case progress. One is the "Case Progress Report", which is a monitoring report for each judge, with a case being put on the No Progress Docket if nothing was scheduled within

91 days. Established court policy was that, if there were any scheduling on a case, it would not be put on the No Progress Docket. Respondent repeatedly pressured or coerced court employees into placing cases on the No Progress Docket, even though there was scheduled activity, contrary to MCR 2.502 and established court policy.

40. The conduct described in paragraph 39 constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct (“MCJC”), Canon 1;
- (d) Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
- (e) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- (f) Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;

- (g) Failure to be faithful to the law and to maintain professional competence in it, contrary to MCJC, Canon 3A(1);
- (h) Lack of personal responsibility for Respondent's own behavior and for the proper conduct and administration of the court in which Respondent presides, contrary to MCR 9.205(A);
- (i) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (j) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (k) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (l) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

COUNT IV: Excessive absences, belated commencement of proceedings, untimely adjournments and improper docket management.

41. During Respondent's service on the circuit bench, she has been repeatedly absent from court without adequate explanation or excuse, a pattern of behavior that reaches back to her days as a district court judge. In circuit court, this has been particularly true except for motion days or scheduled trial days. On various occasions, Respondent failed to take the bench timely and/or worked

irregular hours without allowance for the convenience or needs of parties, counsel or the public. On other occasions, Respondent cancelled matters on short notice for Respondent's personal convenience, inconveniencing counsel, parties or witnesses. This conduct is exemplified by, but limited not to the following:

- (a) In December, 2005, Respondent was assigned to sign all subpoenas for investigative matters by the prosecutor and all requests for phone taps. Two detectives, one from the Michigan State Police and the other from the Lansing Police Department, came to court to get subpoenas signed. Respondent was not at court, but court staff contacted Respondent and Respondent informed them, around 10:00 a.m., to tell the officers to leave the subpoenas at court and Respondent would shortly be in. At approximately 4:30 p.m., Respondent called the court and stated Respondent was on the way in and to call the officers and tell them they could pick up the subpoenas. When the court staff called the detectives, they were unavailable because their shifts had ended;
- (b) On November 18, 2005, while conducting a bench trial, Respondent informed the parties and attorneys the trial would be adjourned so the staff could have lunch. In actuality, Respondent went to Brighton, Michigan to pick up children of a relative, got caught in heavy traffic and cancelled out the remainder of the day;
- (c) On a motion day in 2005, with a full courtroom present, Respondent stood up suddenly and announced she had to leave to let a repairman in her house. Respondent then walked out of the courtroom and did not return until approximately two hours later, inconveniencing persons required to be present to transact business before the court;
- (d) In *People v James Jones*, Case Nos. 05-1054 and 05-1055, trial was scheduled to begin. On January 30, 2006, the assistant prosecutor was present in court with one set of witnesses and another set of witnesses on telephone standby, when a member

of Respondent's staff advised everyone that Respondent's sister was sick and that Respondent was in Detroit with her sister. Respondent's assistant also stated that matters scheduled for January 30, 2006 and January 31, 2006 were cancelled;

- (e) Respondent was presiding over a jury trial in *People v Montreal Darnell Christian-Bates*, Case No. 05-00749-FC. On December 8, 2005, Respondent announced that because of the approach of a major snowstorm, proceedings would start an extra 30 minutes early and stop at noon. The following morning, December 9, 2005, even though all but two alternate jurors were present, and all court staff, attorneys and the defendant were present, Respondent called in sometime after 8:00 a.m. and cancelled the trial because of a snow day. Later, that morning, Respondent was seen with her children in chambers;
- (f) On September 18, 2006, Respondent was 45 minutes later for a motion;
- (g) On November 1, 2006, Respondent did not take the bench for motion day until 9:45 a.m.;
- (h) On December 11, 2006, Respondent was one hour late for a jury trial;
- (i) On December 18, 2006, Respondent did not appear for a trial until after 10:00 a.m. even though the jurors were present at 8:30 a.m.;
- (j) On March 19, 2007, Respondent did not appear for a trial until after 10:30 a.m.;
- (k) On November 8, 2006, Respondent did not appear for sentencing of ten prisoners and for eight prisoners with plea agreements present with transport officers; and
- (l) On April 30, 2007, there were five criminal cases set and noticed for trial at 8:30 a.m. The parties and their attorneys were present on time. Respondent failed to arrive at the courthouse until 10:45 a.m. Until her belated appearance, the

parties and their attorneys had been given no notice of when, or even of whether, the Respondent would be attending court that day.

42. The conduct described in paragraph 41 constitutes:
- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
 - (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
 - (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct (“MCJC”), Canon 1;
 - (d) Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
 - (e) Conduct involving impropriety and the appearance of impropriety, in violation of the MCJC, Canon 2A;
 - (f) Allowing family, social, or other relationships to influence judicial conduct or judgment, in violation of MCJC, Canon 2C;
 - (g) Lack of personal responsibility for Respondent’s own behavior and for the proper conduct and administration of the court in which Respondent presides, contrary to MCR 9.205(A);
 - (h) Conduct prejudicial to the administration of justice, in violation of MCR 9.104(A)(1);

- (i) Conduct that exposes the legal profession or courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(A)(2);
- (j) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (k) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

COUNT V: Improper *ex parte* communications.

43. In *Sean Scott v Williamston Community School Board*, Case No. 02-001722-NZ, the defendant filed a motion for summary disposition.

44. At a settlement conference, Respondent told defense counsel she could deny his motion for summary disposition and he would have to go trial immediately. Defense counsel told Respondent he could not settle and that, were Respondent to deny his motion, he had the right to appeal immediately.

45. The following day, Respondent made an *ex parte* telephone call to defense counsel and demanded to know on what authority defense counsel could immediately take an appeal if the motion for summary disposition were denied.

46. Respondent initiated *ex parte* phone conversations with attorney David Otis in three separate matters which were pending before her. Those occasions are exemplified by the following:

- (a) In *Gage, Pierce and Anselmo v City of Lansing and Charter Township of Lansing*, Case No. 01-93723 CZ, Respondent presided over a settlement conference. Respondent subsequently phoned Mr. Otis and enquired what he thought of her behavior at the settlement conference. Mr. Otis had not attended the conference, but an associate had been present in his stead. Respondent indicated she had gotten some negative feedback from an attorney at the settlement conference;
- (b) In *Dunn v City of Lansing*, Case No. 04-1166-NO, Mr. Otis had filed a written motion for additional discovery. Respondent called Mr. Otis and stated she thought she had told him that, if he wanted to extend the time for additional discovery, he needed supporting documentation. Mr. Otis had no recollection of a prior meeting with Respondent or her staff on the case; and
- (c) In *KafTan Enterprises d/b/a Meridian Crossing v Meridian Township*, Case No. 04-001466-CE, Mr. Otis had just filed a motion for summary disposition. Respondent called Mr. Otis, and indicated she was looking at his motion, could not find a notice of proof of service and asked where it was.

47. In *Charles Mahoney v Value City*, Case No. 02-001592-NO, Respondent made an offer of settlement in the amount of \$60,000 to counsel for the plaintiff without authorization or commitment from counsel for defendant Value City and later told counsel for the plaintiff Respondent could get an additional \$5,000 from the defendant when no such commitment had been obtained from defense counsel.

48. In the course of these dealings, Respondent made several *ex parte* telephone calls to Kristine Shalda, team manager for Zurich American Insurance, in which Respondent sought to persuade the insurance carrier to offer \$65,000 in

settlement of the suit. Respondent also attempted to speak *ex parte* with Luciell Sgaglioni, Ms. Shalda's supervisor, who was director of the division.

49. In *In the Matter of Michael J. Friedman, M.D.*, Case No. 04-001295 CZ, Attorney Mark Meadows was representing a defendant in a disciplinary hearing before the Bureau of Licensing and Regulation.

50. Counsel for the defendant filed an action in circuit court in order to obtain subpoenas.

51. Respondent signed an order placing the matter on the No Progress Docket.

52. After Mr. Meadows contacted Respondent's staff, she called counsel *ex parte* and discussed counsel's request for subpoenas.

53. Following a hearing on the matter, Respondent called counsel again and stated she was going to dismiss the case based on lack of progress.

54. Respondent then signed an order dismissing the case although a hearing was still pending before the administrative law judge, and the matter did not meet criteria for no progress dismissal under MCR 2.502.

55. The conduct described in paragraphs 43 through 54 constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of

1963, as amended, Article VI, §30, and MCR 9.205;

- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the MCJC, Canon 1;
- (d) Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
- (e) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- (f) Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;
- (g) Failure to be faithful to the law and to maintain professional competence in it, contrary to MCJC, Canon 3A(1);
- (h) *Ex parte* communications, in violation of MCJC 3A(4);
- (i) Lack of personal responsibility for Respondent's own behavior and for the proper conduct and administration of the court in which Respondent presides, contrary to MCR 9.205(A);
- (j) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (k) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);

- (l) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (m) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

COUNT VI: Allowing social or other relationships to influence release of a criminal defendant from probation.

56. Gwen Dupard, was employed as a supervisory employee in the clerk's office at the 30th Circuit Court. Respondent was a friend and social acquaintance of Ms. Dupard.

57. Deshawn Anderson had been convicted of both possession of firearms by a felon and possession of cocaine. He was on probation to the Respondent.

58. At the time, Ms. Dupard was involved in a romantic relationship with Mr. Anderson and was living with him.

59. Mr. Anderson had failed drug screens the latter part of 2003 and failed to appear in one month in 2003 for any drug screening. Mr. Anderson had previously violated his probation and not completed his probation conditions. He owed \$160 in court monitor obligations and had yet to complete the Foundations program at Total Health Education.

60. Ms. Dupard visited Respondent on several occasions in chambers and had closed door meetings relating to the case of *People v Deshawn Anderson*, Case No. 01-77466 FH.

61. By written communication, dated January 29, 2004, Respondent *sua sponte* directed that Mr. Anderson be discharged from probation as soon as possible because he was allegedly moving to Detroit for employment.

62. On February 2, 2004, Probation Agent Jason Gordon phoned Angela Morgan of Respondent's staff about the proposed early release of Mr. Anderson. He informed Ms. Morgan of Mr. Anderson's poor probation history, drug screen failures and Mr. Gordon's intent to violate Mr. Anderson's probation. Ms. Morgan stated she would convey that information to Respondent.

63. On or about February 3, 2004, Mr. Gordon received a communication from Angela Morgan indicating Respondent was requesting Mr. Anderson be released from probation early.

64. On February 13, 2004, Respondent signed the order discharging Deshawn Anderson from probation early.

65. Gwen Dupard was discharged as an employee of the 30th Circuit Court as a result of her involvement in the early termination of Deshawn Anderson from probation.

66. On or about February 23, 2005, Respondent requested that Chief Judge William Collette reinstate Gwen Dupard as a circuit court supervisor.

67. The conduct described in paragraphs 56 through 66 constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the MCJC, Canon 1;
- (d) Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
- (e) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- (f) Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;
- (g) Allowing family, social, or other relationships to influence judicial conduct or judgment, in violation of MCJC, Canon 2C;
- (h) *Ex parte* communications, in violation of MCJC, Canon 3A(4);

- (i) Lack of personal responsibility for Respondent's own behavior and for the proper conduct and administration of the court in which Respondent presides, contrary to MCR 9.205(A);
- (j) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (k) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (l) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (m) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

COUNT VII: Attempted retaliation against the probation department and certain employees as a result of the Deshawn Anderson incident.

68. On January 13, 2005, Respondent repeatedly questioned Probation Supervisor Kit San Grotelueschen about whether she had told Deshawn Anderson's probation officer, Jason Gordon, not to talk to her about the *Anderson* case.

69. Respondent then accused Ms. San Grotelueschen of going over Respondent's head.

70. Angela Morgan, Respondent's judicial assistant, had told Mr. Gordon and Ms. San Grotelueschen to discharge Anderson pursuant to Respondent's order.

71. Respondent then asked Ms. San Grotelueschen if she was against black people, indicating Gwen [Dupard] was black and so was Respondent.

72. Respondent told Ms. San Grotelueschen she was disappointed with the probation department and with Ms. San Grotelueschen, that she did not trust Ms. San Grotelueschen, and that Ms. San Grotelueschen had gone behind Respondent's back when she spoke to the court administrator.

73. Respondent also indicated that Ms. San Grotelueschen had also not tried hard enough to speak with her.

74. Ms. San Grotelueschen told Respondent that she did not appreciate being put on the "spot" when she and the other three persons had been meeting with Respondent on an unrelated matter.

75. Respondent replied that it was "too bad." Respondent subsequently pressed a complaint against Ms. San Grotelueschen seeking to have her disciplined. No disciplinary action was taken against Ms. San Grotelueschen.

76. The conduct described in paragraphs 68 through 75 constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;

- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the MCJC, Canon 1;
- (d) Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
- (e) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- (f) Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;
- (g) Allowing family, social, or other relationships to influence judicial conduct or judgment, in violation of MCJC, Canon 2C;
- (h) Failure to be patient, dignified, and courteous to those with whom Respondent deals in an official capacity, contrary to MCJC, Canon 3A(3);
- (i) Lack of personal responsibility for Respondent's own behavior and for the proper conduct and administration of the court in which Respondent presides, contrary to MCR 9.205(A);
- (j) Treating persons unfairly or discourteously because of the person's race, gender, or other

protected personal characteristic, contrary to MCR 9.205(B)(1)(d);

- (k) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (l) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (m) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (n) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

COUNT VIII: Improper termination of judicial assistant Angela Morgan and cover-up of reasons for dismissal.

77. On December 1, 2006, Respondent terminated the employment of Angela Morgan, her long-time judicial assistant. The Respondent believed Ms. Morgan had provided information to the SCAO which the Tenure Commission had recently requested Respondent to comment on. Ms. Morgan also informed Respondent she had been subpoenaed to testify by the Commission. Respondent attempted to create a false and misleading paper trail to create the erroneous impression Ms. Morgan had voluntarily quit, and cover up the retaliatory firing.

78. The conduct described in paragraph 77 constitutes:
- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
 - (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
 - (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the MCJC, Canon 1;
 - (d) Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
 - (e) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
 - (f) Failure to respect and observe the law and to conduct yourself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B, and the Whistleblowers' Protection Act, MCL 15.361 *et seq.*;
 - (g) Lack of personal responsibility for Respondent's own behavior and for the proper conduct and administration of the court in which you presides, contrary to MCR 9.205(A);
 - (h) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);

- (i) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (j) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (k) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

COUNT IX: Incident at service station.

79. On January 16, 2006, Respondent stopped at Keusch Super Service, in Portland, Michigan, to purchase gasoline for Respondent's vehicle. Respondent pumped the gasoline herself in the amount of \$51.65 and paid for it at the pump.

80. Respondent went into the store, threw the receipt on the counter and told Richard Keusch, owner of the business, who was at the cash register, that his pumps were not working. Respondent further accused Mr. Keusch of cheating the public and demanded her money back. These accusations were made in the presence of other customers.

81. Mr. Keusch went outside and attempted to pump additional gas in Respondent's vehicle. He was able to pump slightly over an additional gallon, which amounted to \$3.00.

82. Mr. Keusch checked the fuel gage on Respondent's vehicle and informed her that it was not operating properly.

83. Respondent told him that the vehicle had been in for repairs recently and that it had been taken care of.

84. Mr. Keusch asked Respondent for the additional \$3.00 worth of gasoline which he had pumped.

85. Respondent refused to pay, gave Mr. Keusch her business card identifying her as a judge of the 30th Circuit Court, and stated Respondent would see him in court.

86. That same day Mr. Keusch filed a police report with the City of Portland Police Department complaining about Respondent's refusal to pay for the gasoline. The police report treated the incident as a possible larceny.

87. Following dissemination of the story in the newspaper, Respondent phoned Keusch Super Service, on January 26, 2006 and authorized payment of the additional \$3.00 by credit card.

88. The conduct described in paragraphs 79 through 87 constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;

- (c) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- (d) Using the prestige of office to advance personal business interests, contrary to MCJC Canon 2C;
- (e) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (f) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (g) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (h) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

COUNT X: Race and Racism

89. In the fall of 2003, Respondent declared to her staff that she would not hesitate to play “the race card.”

A. The memo from the Chief Judge

90. On March 9, 2004, Chief Judge William Collette sent Respondent a memo noting, among other things, her absences from court and the fact of

complaints from fellow judges, staff and attorneys. Judge Collette's memo stated it was a "wake-up call" and expressed hope Respondent would begin coming to court and working a normal day.

91. On March 15, 2004, Respondent met with Chief Judge William Collette and James Hughes, Administrator for Region II of the State Court Administrative Office, concerning the subject matter of Judge Collette's memo. During that meeting, Respondent denied any lack of diligence on her part and rejected the substance of Judge Collette's March 9, 2004 memo.

92. During the March 15, 2004, meeting Respondent demanded to know which employees on her staff had spoken to Chief Judge Collette about Respondent's activities. The next morning, Respondent fired her law clerk, Anne Marie Ward-Fuchs, without warning. Judge Thomas Brown then hired Ms. Ward-Fuchs on a short-term basis, and Respondent sought to have Judge Brown fire Ms. Fuchs.

93. Respondent referred to Judge Collette at that March 15, 2004 meeting as a "racist," a "white boy," and a "liar." Respondent also stated James Hughes was a "racist" and described this as an instance of "two white boys" ganging up on a black judge.

94. The conduct described in paragraphs 89 through 93 constitutes:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct (“MCJC”), Canon 1;
- (d) Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
- (e) Conduct involving impropriety and the appearance of impropriety, in violation of the MCJC, Canon 2A;
- (f) Failure to be patient, dignified, and courteous to those with whom Respondent deals in an official capacity, contrary to MCJC, Canon 3A(3);
- (g) Lack of personal responsibility for Respondent’s own behavior and for the proper conduct and administration of the court in which Respondent presides, contrary to MCR 9.205(A);
- (h) Persistent failure to treat persons fairly and courteously, contrary to MCR 9.205 (B)(1)(c);
- (i) Treating persons unfairly or discourteously because of the person’s race, gender, or other protected personal characteristic, contrary to MCR 9.205(B)(1)(d);

- (j) Conduct prejudicial to the proper administration of justice, in violation of MCR 9.104(A)(1);
- (k) Conduct that exposes the legal profession or courts to obloquy, contempt, censure, or reproach, contrary to MCR 9.104(A)(2);
- (l) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (m) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

B. Spurious complaint with the Michigan Civil Rights Commission.

95. In December, 2005, Respondent went to the Lansing State Journal and complained about purported racial discrimination by the Hon. William Collette, Chief Judge of the 30th Circuit Court.

96. On or about January 14, 2006, an article appeared in the Lansing State Journal concerning the above subject matter.

97. Respondent stated that Judge Collette had “meddled” in her court operations by insisting she break an hour for lunch and by assigning a court reporter who did not apply for the position. Respondent also claimed that Judge Collette had suggested she was not working enough. She accused Judge Collette of treating her differently from other judges because she was an “African-American female judge.”

98. Respondent indicated that she would file a formal complaint with the Civil Rights Commission if a resolution could not be reached informally.

99. On or about January 18, 2006, Respondent filed her complaint with the Michigan Civil Rights Commission. She accused Judge Collette of race-based “discriminatory interference” with Respondent’s ability to operate her courtroom, supervise court staff and properly conduct proceedings.

100. One week later, Respondent withdrew her complaint on January 25, 2006.

101. In explaining her dismissal of the complaint, Respondent stated that she believed the issues with Judge Collette could be resolved internally and informally.

102. Yet, on February 1, 2006, Respondent was still alleging in an interview with the City Pulse newspaper that Judge Collette had denied her “the ability to operate my courtroom, supervise courtroom staff and conduct proceedings . . . because of my race.”

C. Further unsubstantiated allegations of racial discrimination.

103. On January 26, 2007, Respondent called a press conference in her courtroom to which members of the news media had been invited and were in attendance. During the press conference, Respondent again “played the race card”

and accused the Hon. William Collette in unsubstantiated, generalized language of treating her differently because she was black.

104. The conduct described in paragraphs 95 through 103 constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct (“MCJC”), Canon 1;
- (d) Failure to bear in mind that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to MCJC, Canon 1;
- (e) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- (f) Failure to conduct yourself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary, contrary to MCJC, Canon 2B;
- (g) Lack of personal responsibility for Respondent’s own behavior and for the proper conduct and administration of the court in which Respondent presides, contrary to MCR 9.205(A);

- (h) Treating persons unfairly or discourteously because of the person's race, gender, or other protected personal characteristic, contrary to MCR 9.205(B)(1)(d);
- (i) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (j) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (k) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (l) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

D. Other spurious allegations of racial discrimination or racism.

105. While a member of the 54-A District Court, Respondent made a number of comments or was involved in incidents with racial overtones or implications which include, but are not limited to, the following:

- (a) Respondent's office space was being enlarged and improved by City of Lansing maintenance workers. Respondent called the person on the project in and stated words to the effect that Respondent hoped the reason the project was taking so long was not because Respondent was black;
- (b) When candidates were being interviewed for a vacant position as probation officer at the court, Respondent told Court Administrator Larry Theisen that he would not hire a person whom Respondent favored, because that person was black;

- (c) Respondent accused Court Administrator Theisen of assigning more cases to her than other judges at the court because she was black, even though Respondent was aware that Mr. Theisen, as court administrator, did not make those assignments.
- (d) When John Rehagen was court administrator, Respondent made comments implying minorities were not being hired for discriminatory reasons even though the percentage of minorities employed at the court exceeded the minority population in the City of Lansing.
- (e) Respondent went through the files for job applicants, pulled out the files of minority applicants, selected one such file, and told John Rehagen to “hire” that person.

106. The conduct described in paragraph 105 constitutes:

- (a) Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, §30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, §30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Michigan Code of Judicial Conduct (“MCJC”), Canon 1;
- (d) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;


- (e) Allowing family, social, or other relationships to influence judicial conduct or judgment, in violation of MCJC, Canon 2C;
- (f) Failure to be patient, dignified, and courteous to those with whom Respondent deals in an official capacity, contrary to MCJC, Canon 3A(3);
- (g) Lack of personal responsibility for Respondent's own behavior and for the proper conduct and administration of the court in which Respondent presides, contrary to MCR 9.205(A);
- (h) Persistent failure to treat persons fairly and courteously, contrary to MCR 9.205(B)(1)(c);
- (i) Treating persons unfairly or discourteously because of the person's race, gender, or other protected personal characteristic, contrary to MCR 9.205(B)(1)(d);
- (j) Conduct prejudicial to the proper administration of justice, in violation of to MCR 9.104(A)(1);
- (k) Conduct that exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(A)(2);
- (l) Conduct contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- (m) Conduct that violates the standards or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).


Pursuant to MCR 9.209, Respondent is advised that an original verified answer to the foregoing complaint, and nine copies thereof, must be filed with the

Commission within 14 days after service upon Respondent of the complaint. Such answer shall be in a form similar to the answer in a civil action in a circuit court and shall contain a full and fair disclosure of all the facts and circumstances pertaining to Respondent's alleged misconduct. The willful concealment, misrepresentation, or failure to file such answer and disclosure shall be additional grounds for disciplinary action under the complaint.

JUDICIAL TENURE COMMISSION
OF THE STATE OF MICHIGAN

3034 W. Grand Boulevard, Suite 8-450
Detroit, MI 48202

By: 
Paul J. Fischer (P35454)
Examiner


Thomas L. Prowse (P19121)
Associate Examiner

Dated: **May 16, 2007**

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